

109TH CONGRESS
1ST SESSION

H. R. 1697

To amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2005

Ms. NORTON introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on account of sex, race, or national origin, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fair Pay Act of 2005”.

6 (b) REFERENCE.—Except as provided in section 8,
7 whenever in this Act an amendment or repeal is expressed
8 in terms of an amendment to, or repeal of, a section or
9 other provision, the reference shall be considered to be

1 made to a section or other provision of the Fair Labor
2 Standards Act of 1938 (29 U.S.C. 201 et seq.).

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) Wage rate differentials exist between equiv-
6 alent jobs segregated by sex, race, and national ori-
7 gin in Government employment and in industries en-
8 gaged in commerce or in the production of goods for
9 commerce.

10 (2) The existence of such wage rate differen-
11 tials—

12 (A) depresses wages and living standards
13 for employees necessary for their health and ef-
14 ficiency;

15 (B) prevents the maximum utilization of
16 the available labor resources;

17 (C) tends to cause labor disputes, thereby
18 burdening, affecting, and obstructing com-
19 merce;

20 (D) burdens commerce and the free flow of
21 goods in commerce; and

22 (E) constitutes an unfair method of com-
23 petition.

1 (3) Discrimination in hiring and promotion has
2 played a role in maintaining a segregated work
3 force.

4 (4) Many women and people of color work in
5 occupations dominated by individuals of their same
6 sex, race, and national origin.

7 (5) A 2000 study conducted by the Census Bu-
8 reau of 400 fields that employed 10,000 full-time,
9 year-round workers found that women were able to
10 earn at least as much as men in just 5 fields: haz-
11 ardous material removal, telecommunications line in-
12 stallation and repair, meeting and convention plan-
13 ning, food preparation, and construction trade as-
14 sistant work.

15 (6) In 2004, an Institute for Women’s Policy
16 Research analysis of data collected in the Current
17 Population Survey by the Bureau of Labor Statistics
18 found that women were paid only 76 cents for every
19 dollar that a man is paid.

20 (7) Section 6(d) of the Fair Labor Standards
21 Act of 1938 (29 U.S.C. 206(d)) prohibits discrimi-
22 nation in compensation for “equal work” on the
23 basis of sex.

24 (8) Title VII of the Civil Rights Act of 1964
25 (42 U.S.C. 2000e et seq.) prohibits discrimination in

1 compensation because of race, color, religion, na-
2 tional origin, and sex. The Supreme Court, in its de-
3 cision in *County of Washington v. Gunther*, 452
4 U.S. 161 (1981), held that title VII's prohibition
5 against discrimination in compensation also applies
6 to jobs that do not constitute "equal work" as de-
7 fined in section 6(d) of the Fair Labor Standards
8 Act of 1938 (29 U.S.C. 206(d)). Decisions of lower
9 courts, however, have demonstrated that further
10 clarification of existing legislation is necessary in
11 order effectively to carry out the intent of Congress
12 to implement the Supreme Court's holding in its
13 *Gunther* decision.

14 (9) Artificial barriers to the elimination of dis-
15 crimination in compensation based upon sex, race,
16 and national origin continue to exist more than 3
17 decades after the passage of section 6(d) of the Fair
18 Labor Standards Act of 1938 (29 U.S.C. 206(d))
19 and the Civil Rights Act of 1964. Elimination of
20 such barriers would have positive effects, includ-
21 ing—

22 (A) providing a solution to problems in the
23 economy created by discrimination through
24 wage rate differentials;

1 (B) substantially reducing the number of
2 working women and people of color earning low
3 wages, thereby reducing the dependence on pub-
4 lic assistance; and

5 (C) promoting stable families by enabling
6 working family members to earn a fair rate of
7 pay.

8 **SEC. 3. EQUAL PAY FOR EQUIVALENT JOBS.**

9 (a) AMENDMENT.—Section 6 (29 U.S.C. 206) is
10 amended by adding at the end the following:

11 “(h)(1)(A) Except as provided in subparagraph (B),
12 no employer having employees subject to any provision of
13 this section shall discriminate, within any establishment
14 in which such employees are employed, between employees
15 on the basis of sex, race, or national origin by paying
16 wages to employees in such establishment in a job that
17 is dominated by employees of a particular sex, race, or
18 national origin at a rate less than the rate at which the
19 employer pays wages to employees in such establishment
20 in another job that is dominated by employees of the oppo-
21 site sex or of a different race or national origin, respec-
22 tively, for work on equivalent jobs.

23 “(B) Nothing in subparagraph (A) shall prohibit the
24 payment of different wage rates to employees where such
25 payment is made pursuant to—

1 “(i) a seniority system;

2 “(ii) a merit system;

3 “(iii) a system that measures earnings by quan-
4 tity or quality of production; or

5 “(iv) a differential based on a bona fide factor
6 other than sex, race, or national origin, such as edu-
7 cation, training, or experience, except that this
8 clause shall apply only if—

9 “(I) the employer demonstrates that—

10 “(aa) such factor—

11 “(AA) is job-related with respect
12 to the position in question; or

13 “(BB) furthers a legitimate busi-
14 ness purpose, except that this item
15 shall not apply if the employee dem-
16 onstrates that an alternative employ-
17 ment practice exists that would serve
18 the same business purpose without
19 producing such differential and that
20 the employer has refused to adopt
21 such alternative practice; and

22 “(bb) such factor was actually applied
23 and used reasonably in light of the as-
24 serted justification; and

1 “(II) upon the employer succeeding under
2 subclause (I), the employee fails to demonstrate
3 that the differential produced by the reliance of
4 the employer on such factor is itself the result
5 of discrimination on the basis of sex, race, or
6 national origin by the employer.

7 “(C) The Equal Employment Opportunity Commis-
8 sion shall issue guidelines specifying criteria for deter-
9 mining whether a job is dominated by employees of a par-
10 ticular sex, race, or national origin. Such guidelines shall
11 not include a list of such jobs.

12 “(D) An employer who is paying a wage rate differen-
13 tial in violation of subparagraph (A) shall not, in order
14 to comply with the provisions of such subparagraph, re-
15 duce the wage rate of any employee.

16 “(2) No labor organization or its agents representing
17 employees of an employer having employees subject to any
18 provision of this section shall cause or attempt to cause
19 such an employer to discriminate against an employee in
20 violation of paragraph (1)(A).

21 “(3) For purposes of administration and enforcement
22 of this subsection, any amounts owing to any employee
23 that have been withheld in violation of paragraph (1)(A)
24 shall be deemed to be unpaid minimum wages or unpaid
25 overtime compensation under this section or section 7.

1 “(4) In this subsection:

2 “(A) The term ‘labor organization’ means any
3 organization of any kind, or any agency or employee
4 representation committee or plan, in which employ-
5 ees participate and that exists for the purpose, in
6 whole or in part, of dealing with employers con-
7 cerning grievances, labor disputes, wages, rates of
8 pay, hours of employment, or conditions of work.

9 “(B) The term ‘equivalent jobs’ means jobs that
10 may be dissimilar, but whose requirements are
11 equivalent, when viewed as a composite of skills, ef-
12 fort, responsibility, and working conditions.”.

13 (b) CONFORMING AMENDMENT.—Section 13(a) (29
14 U.S.C. 213(a)) is amended in the matter before paragraph
15 (1) by striking “section 6(d)” and inserting “sections 6(d)
16 and 6(h)”.

17 **SEC. 4. PROHIBITED ACTS.**

18 Section 15(a) (29 U.S.C. 215(a)) is amended—

19 (1) by striking the period at the end of para-
20 graph (5) and inserting a semicolon; and

21 (2) by adding after paragraph (5) the following
22 new paragraphs:

23 “(6) to discriminate against any individual be-
24 cause such individual has opposed any act or prac-
25 tice made unlawful by section 6(h) or because such

1 individual made a charge, testified, assisted, or par-
2 ticipated in any manner in an investigation, pro-
3 ceeding, or hearing to enforce section 6(h); or

4 “(7) to discharge or in any other manner dis-
5 criminate against, coerce, intimidate, threaten, or
6 interfere with any employee or any other person be-
7 cause the employee inquired about, disclosed, com-
8 pared, or otherwise discussed the employee’s wages
9 or the wages of any other employee, or because the
10 employee exercised, enjoyed, aided, or encouraged
11 any other person to exercise or enjoy any right
12 granted or protected by section 6(h).”.

13 **SEC. 5. REMEDIES.**

14 (a) **ENHANCED PENALTIES.**—Section 16(b) of the
15 Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is
16 amended—

17 (1) by inserting after the first sentence the fol-
18 lowing: “Any employer who violates subsection (d) or
19 (h) of section 6 shall additionally be liable for such
20 compensatory or punitive damages as may be appro-
21 priate, except that the United States shall not be lia-
22 ble for punitive damages.”;

23 (2) in the sentence beginning “An action to”,
24 by striking “either of the preceding sentences” and

1 inserting “any of the preceding sentences of this
2 subsection”;

3 (3) in the sentence beginning “No employees”,
4 by striking “No employees” and inserting “Except
5 with respect to class actions brought under sub-
6 section (f), no employee”;

7 (4) in the sentence beginning “The court in”,
8 by striking “in such action” and inserting “in any
9 action brought to recover the liability prescribed in
10 any of the preceding sentences of this subsection”;
11 and

12 (5) by striking “section 15(a)(3)” each place it
13 occurs and inserting “paragraphs (3), (6), and (7)
14 of section 15(a)”.

15 (b) ACTION BY SECRETARY.—Section 16(c) of the
16 Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is
17 amended—

18 (1) in the first sentence—

19 (A) by inserting “or, in the case of a viola-
20 tion of subsection (d) or (h) of section 6, addi-
21 tional compensatory or punitive damages,” be-
22 fore “and the agreement”; and

23 (B) by inserting before the period the fol-
24 lowing: “, or such compensatory or punitive
25 damages, as appropriate”;

1 (2) in the second sentence, by inserting before
2 the period the following: “and, in the case of a viola-
3 tion of subsection (d) or (h) of section 6, additional
4 compensatory or punitive damages”; and

5 (3) in the third sentence, by striking “the first
6 sentence” and inserting “the first or second sen-
7 tence”.

8 (c) FEES.—Section 16 (29 U.S.C. 216) is amended
9 by adding at the end the following:

10 “(f) In any action brought under this section for vio-
11 lation of section 6(h), the court shall, in addition to any
12 other remedies awarded to the prevailing plaintiff or plain-
13 tiffs, allow expert fees as part of the costs. Any such action
14 may be maintained as a class action as provided by the
15 Federal Rules of Civil Procedure.”.

16 **SEC. 6. RECORDS.**

17 (a) TECHNICAL AMENDMENT.—Section 11(c) (29
18 U.S.C. 211(c)) is amended by inserting “(1)” after “(c)”.

19 (b) RECORDS.—Section 11(c) (as amended by sub-
20 section (a)) is further amended by adding at the end the
21 following:

22 “(2)(A) Every employer subject to section 6(h) shall
23 preserve records that document and support the method,
24 system, calculations, and other bases used by the employer
25 in establishing, adjusting, and determining the wage rates

1 paid to the employees of the employer. Every employer
2 subject to section 6(h) shall preserve such records for such
3 periods of time, and shall make such reports from the
4 records to the Equal Employment Opportunity Commis-
5 sion, as shall be prescribed by the Equal Employment Op-
6 portunity Commission by regulation or order as necessary
7 or appropriate for the enforcement of the provisions of sec-
8 tion 6(h) or any regulation promulgated pursuant to sec-
9 tion 6(h).”.

10 (c) SMALL BUSINESS EXEMPTIONS.—Section 11(c)
11 (as amended by subsections (a) and (b)) is further amend-
12 ed by adding at the end the following:

13 “(B)(i) Every employer subject to section 6(h) that
14 has 25 or more employees on any date during the first
15 or second year after the effective date of this paragraph,
16 or 15 or more employees on any date during any subse-
17 quent year after such second year, shall, in accordance
18 with regulations promulgated by the Equal Employment
19 Opportunity Commission under subparagraph (F), pre-
20 pare and submit to the Equal Employment Opportunity
21 Commission for the year involved a report signed by the
22 president, treasurer, or corresponding principal officer, of
23 the employer that includes information that discloses the
24 wage rates paid to employees of the employer in each clas-
25 sification, position, or job title, or to employees in other

1 wage groups employed by the employer, including informa-
2 tion with respect to the sex, race, and national origin of
3 employees at each wage rate in each classification, posi-
4 tion, job title, or other wage group.”.

5 (d) PROTECTION OF CONFIDENTIALITY.—Section
6 11(c) (as amended by subsections (a) through (c)) is fur-
7 ther amended by adding at the end the following:

8 “(ii) The rules and regulations promulgated by the
9 Equal Employment Opportunity Commission under sub-
10 paragraph (F), relating to the form of such a report, shall
11 include requirements to protect the confidentiality of em-
12 ployees, including a requirement that the report shall not
13 contain the name of any individual employee.”.

14 (e) USE; INSPECTIONS; EXAMINATIONS; REGULA-
15 TIONS.—Section 11(c) (as amended by subsections (a)
16 through (d)) is further amended by adding at the end the
17 following:

18 “(C) The Equal Employment Opportunity Commis-
19 sion may publish any information and data that the Equal
20 Employment Opportunity Commission obtains pursuant to
21 the provisions of subparagraph (B). The Equal Employ-
22 ment Opportunity Commission may use the information
23 and data for statistical and research purposes, and com-
24 pile and publish such studies, analyses, reports, and sur-
25 veys based on the information and data as the Equal Em-

1 ployment Opportunity Commission may consider appro-
2 priate.

3 “(D) In order to carry out the purposes of this Act,
4 the Equal Employment Opportunity Commission shall by
5 regulation make reasonable provision for the inspection
6 and examination by any person of the information and
7 data contained in any report submitted to the Equal Em-
8 ployment Opportunity Commission pursuant to subpara-
9 graph (B).

10 “(E) The Equal Employment Opportunity Commis-
11 sion shall by regulation provide for the furnishing of copies
12 of reports submitted to the Equal Employment Oppor-
13 tunity Commission pursuant to subparagraph (B) to any
14 person upon payment of a charge based upon the cost of
15 the service.

16 “(F) The Equal Employment Opportunity Commis-
17 sion shall issue rules and regulations prescribing the form
18 and content of reports required to be submitted under sub-
19 paragraph (B) and such other reasonable rules and regu-
20 lations as the Equal Employment Opportunity Commis-
21 sion may find necessary to prevent the circumvention or
22 evasion of such reporting requirements. In exercising the
23 authority of the Equal Employment Opportunity Commis-
24 sion under subparagraph (B), the Equal Employment Op-
25 portunity Commission may prescribe by general rule sim-

1 plified reports for employers for whom the Equal Employ-
2 ment Opportunity Commission finds that because of the
3 size of the employers a detailed report would be unduly
4 burdensome.”.

5 **SEC. 7. RESEARCH, EDUCATION, AND TECHNICAL ASSIST-**
6 **ANCE PROGRAM; REPORT TO CONGRESS.**

7 Section 4(d) (29 U.S.C. 204(d)) is amended by add-
8 ing at the end the following:

9 “(4) The Equal Employment Opportunity Commis-
10 sion shall conduct studies and provide information and
11 technical assistance to employers, labor organizations, and
12 the general public concerning effective means available to
13 implement the provisions of section 6(h) prohibiting wage
14 rate discrimination between employees performing work in
15 equivalent jobs on the basis of sex, race, or national origin.
16 Such studies, information, and technical assistance shall
17 be based on and include reference to the objectives of such
18 section to eliminate such discrimination. In order to
19 achieve the objectives of such section, the Equal Employ-
20 ment Opportunity Commission shall carry on a continuing
21 program of research, education, and technical assistance
22 including—

23 “(A) conducting and promoting research with
24 the intent of developing means to expeditiously cor-

1 rect the wage rate differentials described in section
2 6(h);

3 “(B) publishing and otherwise making available
4 to employers, labor organizations, professional asso-
5 ciations, educational institutions, the various media
6 of communication, and the general public the find-
7 ings of studies and other materials for promoting
8 compliance with section 6(h);

9 “(C) sponsoring and assisting State and com-
10 munity informational and educational programs; and

11 “(D) providing technical assistance to employ-
12 ers, labor organizations, professional associations,
13 and other interested persons on means of achieving
14 and maintaining compliance with the provisions of
15 section 6(h).

16 “(5) The report submitted biennially by the Secretary
17 to Congress under paragraph (1) shall include a separate
18 evaluation and appraisal regarding the implementation of
19 section 6(h).”.

20 **SEC. 8. CONFORMING AMENDMENTS.**

21 (a) CONGRESSIONAL EMPLOYEES.—

22 (1) APPLICATION.—Section 203(a)(1) of the
23 Congressional Accountability Act of 1995 (2 U.S.C.
24 1313(a)(1)) is amended—

1 (A) by striking “subsections (a)(1) and (d)
 2 of section 6” and inserting “subsections (a)(1),
 3 (d), and (h) of section 6”; and

4 (B) by striking “206 (a)(1) and (d)” and
 5 inserting “206(a)(1), (d), and (h)”.

6 (2) REMEDIES.—Section 203(b) of such Act (2
 7 U.S.C. 1313(b)) is amended by inserting before the
 8 period the following: “or, in an appropriate case,
 9 under section 16(f) of such Act (29 U.S.C. 216(f))”.

10 (b) EXECUTIVE BRANCH EMPLOYEES.—

11 (1) APPLICATION.—Section 413(a)(1) of title 3,
 12 United States Code, is amended by striking “sub-
 13 sections (a)(1) and (d) of section 6” and inserting
 14 “subsections (a)(1), (d), and (h) of section 6”.

15 (2) REMEDIES.—Section 413(b) of such title is
 16 amended by inserting before the period the fol-
 17 lowing: “or, in an appropriate case, under section
 18 16(f) of such Act”.

19 **SEC. 9. EFFECTIVE DATE.**

20 The amendments made by this Act shall take effect
 21 1 year after the date of enactment of this Act.

○